

Message Text

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EXDIS

E.O. 11652: GDS (EXCEPT PARA 9 XGDS-1)

TAGS: PGOV, KS, US

SUBJECT: FRASER SUBCOMMITTEE PRESSURES ON FORMER ROK
DIPLOMATS FOR TESTIMONY

REF: STATE 145789

SUMMARY: FRASER SUBCOMMITTEE PRESSURES ON FORMER ROK
DIPLOMATS TO TESTIFY REGARDING PAST EVENTS HAS LED TO A
SERIES OF REPRESENTATIONS BY THE ROK EMBASSY UNDER
INSTRUCTIONS FROM SEOUL REGARDING ALLEGED INFRINGEMENT OF
THE KOREAN GOVERNMENT'S IMMUNITIES UNDER THE VIENNA
CONVENTION. ON AN INFORMAL CASE BY CASE BASIS THESE HAVE
BEEN DISCUSSED WITH SUBCOMMITTEE STAFF AND THUS FAR ALL
ISSUES HAVE BEEN RESOLVED IN A MANNER WHICH HAS NOT
VIOLATED PRINCIPLES OF IMMUNITY. A PENDING INSTANCE

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INVOLVING A SUBPOENA OF A FORMER ROK DIPLOMAT FOR TESTIMONY
SCHEDULED JUNE 28 RAISES CLOUDY ISSUES, HOWEVER. AT THIS
STAGE IT APPEARS THAT SUBCOMMITTEE MAY ATTEMPT TO
QUESTION THE FORMER DIPLOMAT UNDER SUBPOENA AT LEAST
REGARDING HIS OFFICIAL KNOWLEDGE AND RESPONSIBILITIES IN
THE ROKG IN SEOUL PRIOR TO COMING HERE UNDER DIPLOMATIC
STATUS. WHILE NOT ANTICIPATED OR COVERED BY THE VIENNA

CONVENTION, THERE ARE NO KNOWN PRECEDENTS, AND THIS RAISES THE POTENTIAL ISSUE OF RETIRED AMERICAN DIPLOMATS ABROAD

BECOMING SUBJECT TO COERCED TESTIMONY REGARDING CLASSIFIED USG MATTERS DEALT WITH DURING THEIR PERIODS OF SERVICE IN THE DEPARTMENT OF STATE WHEN THEY WERE NOT COVERED BY VIENNA CONVENTION IMMUNITIES. FOR ROK, CASE IS PARTICULARLY SENSITIVE DUE TO THE INDIVIDUAL'S PAST RELATIONSHIP WITH PRESIDENT PARK. END SUMMARY

BEGIN CONFIDENTIAL GDS

1. EMBASSY SHOULD BE AWARE OF THE FOLLOWING CHRONOLOGY OF EVENTS CONCERNING EFFORTS OF THE FRASER SUBCOMMITTEE TO SECURE TESTIMONY FROM FORMER KOREAN DIPLOMATS.

2. ON JUNE 5 KOREAN EMBASSY COUNSELOR PAK KUN-WOO CALLED AT THE DEPARTMENT ON INSTRUCTIONS TO EXPRESS CONCERN OVER THE SCHEDULED JUNE 7 TESTIMONY BEFORE THE SUBCOMMITTEE OF FORMER EDUCATION ATTACHE (1970-1976) KANG KYUNG-KOO AND FORMER PRESS ATTACHE (1969-1971) LIM KEE-SEO. (SEE REFTEL FOR REPORT ON THIS TESTIMONY.) CITING THE PROTECTION AFFORDED BY THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS AGAINST COMPULSORY TESTIMONY BY DIPLOMATS OR FORMER DIPLOMATS, PAK ASKED THE DEPARTMENT TO TRY TO DISSUADE THE SUBCOMMITTEE FROM SEEKING TESTIMONY FROM SECRET

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KANG AND LIM. BECAUSE THE KOREAN EMBASSY WAS EAGER TO AVOID EVEN THE APPEARANCE OF IMPROPRIETY OR INTERFERENCE, PAK HAD NO INFORMATION ON THE TWO MEN OTHER THAN THEIR FORMER EMPLOYMENT STATUS.

3. WE POINTED OUT TO PAK THAT THE PROTECTION AFFORDED BY THE VIENNA CONVENTION APPLIED ONLY TO COMPULSORY TESTIMONY REGARDING A DIPLOMAT'S OFFICIAL ACTIVITIES. WE ALSO NOTED THAT THE USG COULD NOT BE IN THE POSITION OF DISCOURAGING OR APPEARING TO DISCOURAGE EITHER VOLUNTARY TESTIMONY, OR COMPULSORY TESTIMONY ON EVENTS OTHER THAN THOSE ASSOCIATED WITH THE FORMER DIPLOMATS' OFFICIAL DUTIES. WE NONETHELESS AGREED TO SEEK FURTHER INFORMATION FROM SUBCOMMITTEE STAFF.

4. WE WERE ASSURED BY THE COMMITTEE STAFF THAT KANG, WHO IS NOT A U.S. CITIZEN, WAS TESTIFYING VOLUNTARILY, AND THAT LIM, A NATURALIZED U.S. CITIZEN, HAD BEEN SUBPOENAED BUT WOULD ONLY BE QUESTIONED REGARDING AN INCIDENT OCCURRING SUBSEQUENT TO TERMINATION OF HIS OFFICIAL EMPLOYMENT. AS WILL BE CLEAR FROM THE REPORT OF THE HEARING IN REFTEL, THE NATURE OF THE ACTUAL QUESTIONING

WAS SUCH THAT IMMUNITY ISSUES DID NOT ARISE IN EITHER CASE.

5. ON JUNE 8 PAK AGAIN CONTACTED THE DEPARTMENT WITH

REGARD TO SUBCOMMITTEE EFFORTS TO SECURE TESTIMONY FROM YI YANG-IN, FORMER OFFICER OF THE ROK CONSULATE GENERAL IN NEW YORK. THE TESTIMONY, TENTATIVELY PLANNED FOR THE WEEK OF JUNE 12, WAS TO TAKE PLACE UNDER SUBCOMMITTEE SUBPOENA, AND AGAIN THE ROKG OFFICIALLY SOUGHT USG INTERVENTION. MR. YI HAD CONTACTED THE ROK AMBASSADOR TO THE UN TO COMPLAIN AND THE ROKG IN TURN HAD REQUESTED THE EMBASSY HERE TO MAKE REPRESENTATIONS TO THE DEPARTMENT.

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6. IN DISCUSSION WITH SUBCOMMITTEE STAFF, WE LEARNED THAT THE SUBCOMMITTEE DID HOPE TO QUESTION YI ABOUT HIS PERIOD OF OFFICIAL DUTIES, AND WAS PLANNING TO DO SO IN EXECUTIVE SESSION IN ORDER THAT THERE BE NO ROK EMBASSY PERSONNEL PRESENT. DEPARTMENT OFFICIALS POINTED OUT THAT YI WAS OBVIOUSLY A RELUCTANT WITNESS AND IN SUCH A CIRCUMSTANCE THE DIPLOMATIC IMMUNITY INVOLVED WAS THE PREROGATIVE OF THE KOREAN GOVERNMENT TO WAIVE OR NOT TO WAIVE. DEPARTMENT OFFICERS SUGGESTED THAT AT A MINIMUM THE ROKG SHOULD BE ABLE TO HAVE A CONSULAR OBSERVER PRESENT AT THE HEARING. FOLLOWING SUBCOMMITTEE DELIBERATIONS, WE WERE SUBSEQUENTLY INFORMED THAT THE SUBCOMMITTEE WAS UNWILLING TO ACCEPT AN OBSERVER, BUT THAT IT HAD DETERMINED THAT IT WOULD FIRST QUESTION MR. YI ONLY REGARDING MATTERS NOT RELATED TO HIS PERIOD OF DIPLOMATIC SERVICE. THEN IT WOULD INFORM HIM THAT FROM A GIVEN JUNCTURE HE WAS NO LONGER UNDER SUBPOENA. FURTHER QUESTIONING WOULD ATTEMPT TO ELICIT INFORMATION REGARDING THE PERIOD OF OFFICIAL DUTY BUT THE WITNESS WOULD OBVIOUSLY BE FREE TO DECLINE TO ANSWER OR EVEN TO TERMINATE THE INTERVIEW. (N.B. THE ISSUE OF ROK CONSULAR OBSERVER HAS NOT ARISEN IN DISCUSSION WITH ROK EMBASSY, WHICH IS OBVIOUSLY DESIROUS OF VERY LOW KEY POSTURE, BUT FELT WE SHOULD SOUND OUT SUBCOMMITTEE ON THIS ISSUE.)

7. MR. YI YONG-IN HAS NOW ENGAGED A LAWYER, WHO WILL BE PERMITTED TO BE WITH HIM AT THE HEARING. THE HEARING ITSELF HAS BEEN POSTPONED FROM JUNE 14 UNTIL JUNE 28 AT THE LAWYER'S REQUEST, BUT WILL STILL BE HELD IN EXECUTIVE SESSION. THE LAWYER (BERNARD KENNEY) CONTACTED DEPARTMENT OFFICERS BY PHONE JUNE 9 AND WAS INFORMED THAT IN THE DEPARTMENT'S VIEW WE HAD NO BASIS ON WHICH TO OBJECT TO THE SUBPOENA, SINCE YI IS CLEARLY SUBJECT TO U.S. JURIS-

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DICTION. WE DISCUSSED THE DISTINCTION, HOWEVER, BETWEEN COMPULSORY TESTIMONY REGARDING DIPLOMATIC DUTIES AND OTHER MATTERS. ACCORDING TO KENNY, THE SUBCOMMITTEE COUNSEL HAS INDICATED THAT, ALTHOUGH QUESTIONING WHILE UNDER SUBPOENA WILL NOT COVER YI'S DIPLOMATIC SERVICE. IT WILL RELATE TO YI'S IMMEDIATELY PRIOR RESPONSIBILITIES AS AN OFFICIAL OF THE ROKG IN SEOUL.

8. WE HAVE TAKEN A PRELIMINARY LOOK AT THE LEGAL ISSUES INVOLVED IN THIS LAST QUESTION AND DO NOT BELIEVE YI WOULD BE COVERED IN ANY WAY BY IMMUNITIES UNDER THE VIENNA CONVENTION. POTENTIALLY TROUBLESOME QUESTIONS ARE RAISED, HOWEVER, AND WE ARE AWARE OF NO PRECEDENTS IN WHICH SUCH AN ISSUE HAS BEEN JOINED. RECOGNIZING THAT MANY FORMER U.S. DIPLOMATS ARE LIVING IN RETIREMENT IN FOREIGN COUNTRIES, THIS WOULD RAISE THE QUESTION WHETHER FOREIGN TRIBUNALS COULD COMPEL THEM TO TESTIFY REGARDING USG CLASSIFIED MATTERS WHICH THEY DEALT WITH IN WASHINGTON DURING PERIODS OF DUTY IN THE DEPARTMENT OF STATE NOT COVERED UNDER THE VIENNA CONVENTION.

END CONFIDENTIAL

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9. PRIOR TO HIS ASSIGNMENT TO ROK CONGEN NEW YORK, WE UNDERSTAND THAT YI WAS IN AMERICAN BUREAU OF KCIA IN SEOUL. ROK EMBASSY ALSO INFORMS US THAT EARLIER AS CAPTAIN IN ARMY YI WAS FOR A TIME PERSONAL AIDE TO PRESIDENT PARK WHEN THE LATTER WAS A BRIGADIER GENERAL. BECAUSE OF THIS PERSONAL LINKAGE, ROK EMBASSY FEELS THAT PRESIDENT PARK WILL PERSONALLY BE MUCH EXERCISED OVER FRASER SUBCOMMITTEE EFFORTS TO FORCE TESTIMONY FROM YI REGARDING FORMER OFFICIAL DUTIES IN KOREA. REPORTEDLY, YI REMAINED HERE IN USA PRIMARILY DUE TO MEDICAL TREATMENT REQUIRED BY A CHILD.

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10. EMBASSY WILL RECALL SENSITIVE INFORMATION REPORTED IN OTHER CHANNELS IN LATE 1977 WHICH ALSO CASTS LIGHT ON WHY ROKG MAY BE PARTICULARLY CONCERNED ABOUT EFFORTS TO COMPEL TESTIMONY FROM YI. CHRISTOPHER

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